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PP

v.

RAJISEGAR MUNISAMY

B

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
TENGKU BAHARUDIN SHAH JCA
JAMES FOONG JCA
[CRIMINAL APPEAL NO: B-09-14-2005]

C

6 SEPTEMBER 2005

CRIMINAL PROCEDURE: *Police investigation - Detention - Remand, period of - Criminal Procedure Code, s. 117 - Whether magistrate can grant entire 15-day remand period under one application by police - Whether remand must be granted "from time to time" - Discretion and power of magistrate under s. 117*

D

CRIMINAL PROCEDURE: *Police investigation - Detention - Remand - Exercise of magistrate's power under s. 117 Criminal Procedure Code - Guidelines on how discretion is to be exercised - Proper examination of facts - Recording of reasons for making order of remand - Review by judge*

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The respondent was arrested in connection with a 'road rage' incident which occurred on 25 January 2005 and which resulted in the death of the victim. On 4 February 2005, the respondent

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was produced before the Petaling Jaya Magistrate's Court, whereupon the investigation diary was made available, and the magistrate, on the application of the police and acting under s. 117 of the Criminal Procedure Code ('CPC'), granted the police 13 days to hold the respondent in remand under their custody.

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Dissatisfied, the respondent's solicitor wrote to the High Court at Shah Alam, and the Judicial Commissioner ('the JC'), acting in revision, called for the record of the proceedings. Upon examining it, the JC concluded that the 13-day remand was defective and,

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accordingly, she reduced it to 11 days, the reason d'etre being that s. 117 CPC does **not** permit a magistrate to grant the whole or a substantial part of the maximum allowable detention period of 15 days all in one go or application. It was argued that s. 117(2) CPC contemplates more than one authorisation for

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further detention, and that orders of remand are to be considered "from time to time" based on applications to be made by the police.

Concerned with the JC's holding, the Public Prosecutor appealed. The respondent has since been charged with murder under s. 302 of the Penal Code.

Held

Per Gopal Sri Ram JCA delivering the judgment of the court:

[1] Section 117 CPC confers a discretion upon the magistrate if and when he is approached by the police for an order of remand. (It would thus appear that the magistrate has the power to grant the whole of the 15-day detention period prescribed by s. 117 CPC.) (pp 222 G & 223 H)

[2] Nevertheless, a magistrate who is called upon to exercise his power under s. 117 CPC must act cautiously and with circumspection. He must not accept ipse dixit of the police officer requesting the remand, but must anxiously scrutinise the material that is produced and also record his reasons for making the order. (*Ramli Salleh v. Inspector Yahya Hashim* [1972] 1 LNS 121 followed.) (pp 222 H & 223 A - F, H)

[2a] Here, the magistrate did not address her mind sufficiently to the facts presented. She had also not given any reasons for granting the 13-day remand. This was a sufficient ground for the JC to interfere as she did with the magistrate's order or remand. (p 223 G)

Bahasa Malaysia *translation of headnotes*

Responden telah ditangkap berkaitan satu kes samseng jalanraya yang berlaku pada 25 Januari 2005 dan yang mengakibatkan kematian seorang mangsa. Pada 4 Februari 2005, responden telah dibawa ke Mahkamah Majisteret Petaling Jaya dan berikutnya, setelah dairi penyiasatan dikemukakan, dan bertindak atas permohonan polis dan di bawah s. 117 Kanun Prosedur Jenayah ('KPJ'), majisteret membenarkan polis menahan responden selama 13 hari.

Tidak berpuashati, peguamcara responden menulis kepada Mahkamah Tinggi Shah Alam, berikutan mana Pesuruhjaya Kehakiman ('PK') telah memanggil rekod prosiding untuk tujuan penyemakan. Setelah meneliti rekod, PK mendapati bahawa penahanan 13 hari adalah cacat dan dengan itu mengurangkan tempoh tahanan kepada 11 hari atas alasan bahawa s. 117 KPJ

A tidak membenarkan majisteret membuat perintah tahanan untuk keseluruhan tempoh 15 hari yang dibenarkan oleh undang-undang, atau untuk sebahagian besar tempoh tersebut, secara sekaligus atau pada satu permohonan sahaja. Ianya dihujahkan bahawa s. 117(2) KPJ menggambarkan lebih dari satu kebenaran penahanan
B lanjut, dan bahawa perintah tahanan hendaklah dipertimbang "dari masa ke masa" berdasarkan permohonan-permohonan yang dibuat oleh polis. Terkilan dengan keputusan PK, Pendakwa Raya merayu. Responden, sementara itu, telah didakwa dengan kesalahan bunuh di bawah s. 302 Kanun Keseksaan.

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Diputuskan
Oleh Gopal Sri Ram HMR (menyampaikan penghakiman mahkamah):

D **[1]** Seksyen 117 KPJ memberikan budi bicara kepada majisteret untuk membuat perintah tahanan jika dan bila ianya dipohon oleh polis. (dengan itu majisteret nampaknya mempunyai kuasa untuk membenarkan penahanan bagi keseluruhan 15 hari seperti yang ditetapkan oleh s. 117 KPJ.)

E **[2]** Apapun, seorang majisteret yang diminta melaksanakan kuasanya di bawah s. 117 KPJ hendaklah bertindak secara berhati-hati dan dengan saksama. Beliau tidak harus semata-mata menerima apa yang diperihalkan ipse dixit oleh pegawai polis yang memohon penahanan, tetapi hendaklah meneliti
F dengan halus akan material yang dikemukakan serta merekodkan sebab-sebab beliau membuat perintah berkenaan. (*Ramli Salleh v. Inspector Yahya Hashim* [1972] 1 LNS 121 diikuti.)

G **[2a]** Di sini, majisteret tidak memberi pertimbangan yang secukupnya kepada fakta-fakta yang dikemukakan. Beliau juga tidak memberi sebarang sebab mengapa beliau membenarkan penahanan selama 13 hari. Ini merupakan alasan mencukupi bagi PK untuk campur tangan sebagaimana yang beliau
H lakukan terhadap perintah penahanan oleh majisteret berkenaan.

Case(s) referred to:
Ramli Salleh v. Inspector Yahya Hashim [1973] 1 MLJ 54 ***(foll)***

I **Legislation referred to:**
Criminal Procedure Code, ss. 117, 119

For the appellant - Wong Chiang Kiat DPP
For the respondent - Gobind Singh Deo (Suraj Singh with him); M/s Karpal Singh & Co

[Appeal from High Court, Shah Alam; Criminal Revision Application No: 43-3-2005]

Reported by Gan Peng Chiang

JUDGMENT
(Oral)

Gopal Sri Ram JCA:
This is the judgment of the court.

On 25 January this year, an incident took place in Subang Jaya. It concerned an assault by one road user on another, resulting in the death of the latter. It is what we now commonly call a case of road rage.

The respondent in this appeal was arrested. Investigations commenced.

On 4 February 2005, the respondent was produced before the magistrate at the Petaling Jaya Magistrate Court. The investigation diary relevant to this case was made available to the magistrate. Based on the grounds appearing therein, the learned magistrate acting under s. 117 of the Criminal Procedure Code ("the Code"), granted the police a period of 13 days to hold the respondent in remand under police custody.

The respondent's solicitor was unhappy with this result. He wrote to the judge in Shah Alam. A few days later, the learned judicial commissioner acting in revision, called for the record of the proceedings. Having examined it, she came to a conclusion that the remand of 13 days was defective and she reduced the remand period to 11 days.

The respondent now faces a charge of murder under s. 302 of the Penal Code.

This appeal is, strictly speaking, quite academic so far as the merits are concerned but the prosecution is most concerned with certain observations made by the learned judicial commissioner in the course of her judgment on the provisions of s. 117 of the

Code. According to the learned judicial commissioner, s. 117 does not permit a magistrate to grant the whole of the prescribed period of remand upon one application.

Our s. 117 reads as follows:

> 117. Procedure where investigation cannot be completed within twenty-four hours.
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> (1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall immediately transmit to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the Magistrate.
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> (2) The Magistrate before whom an accused person is produced under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding fifteen days in the whole. If he has no jurisdiction to try the case and considers further detention unnecessary he may order the accused person to be produced before a Magistrate having such jurisdiction or, if the case is triable only by the High Court, before himself or another Magistrate having jurisdiction with a view to transmission for trial by the High Court.
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> (3) A Magistrate authorizing under this section detention in custody of the police shall record his reasons for so doing.

We think it is also important to produce s. 119 of the Code.

> 119. Diary of proceedings in investigation.
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> (1) Every police officer making a police investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary setting forth:
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> (a) the time at which the order, if any, for investigation reached him;
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> (b) the time at which he began and closed the investigation;
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> (c) the place or places visited by him; and
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> (d) a statement of the circumstances ascertained through his investigation.

(2) Notwithstanding anything contained in the Evidence Act 1950, an accused person shall not be entitled, either before or in the course of any inquiry or trial, to call for or inspect any such diary:

Provided that if the police officer who has made the investigation refers to the diary for the purposes of section 159 or 160 of that Act, such entries only as the officer has referred to shall be shown to the accused, and the Court shall at the request of the officer cause any other entries to be concealed from view or obliterated.

It is the contention of the prosecution that the learned Judicial Commissioner fell into error in the way she construed s. 117. According to the learned DPP, there is nothing in s. 117 which as a matter of principle prohibits the grant of the whole period or a substantial part thereof prescribed in that section by way of remand.

Learned counsel for the respondent on the other hand said that the section when properly construed does not do that. In other words, it does not permit the Magistrate to grant the whole or substantial part of the period prescribed by the section.

She relied heavily on the phrase "from time to time" appearing in subsection (2) of s. 117. She said that that phrase envisages more than one application to be made by the police. According to the learned counsel, it follows that the police is not entitled to ask for and the magistrate is not empowered to grant a single order of remand for the whole or substantial part of the period.

With respect, we are unable to agree with the learned judicial commissioner and the submission of the learned counsel for the respondent. The section by itself confers a discretion on the magistrate when if approached by the police for an order of remand. Accordingly, the section must not be construed as to destroy the discretion as intended by Parliament. This would be an impermissible act of encroachment by the judicial arm of the Federation.

In the course of the argument, we were referred to the decision of Syed Agil Barakbah J in the case of *Ramli bin Salleh v. Inspector Yahya bin Hashim* [1973] 1 MLJ 54 at p 56, where the learned judge whose views in such matter as the present is entitled to great respect:

> I must say something about section 117 of the Code having regard to clause (4) of article 5 of the Constitution. The section should be treated as an exception to section 28 which requires a police officer who has arrested a person without warrant to produce him without unnecessary delay and in any case within twenty-four hours after arrest before a magistrate. *The discretionary power to order the remand of the prisoner should be exercised sparingly because it requires the magistrate to record his grounds for making the order. The section contemplates more than one application for the remand order and the maximum period for remand as a whole is fifteen days. The magistrate should not allow the full period as a matter of course but should weigh the seriousness of the offence and determine whether a shorter period would be sufficient to enable the police to complete investigation.* If so, such shorter period should be given. That would in a way help to hasten investigation to ensure speedy trial and prevent the prisoner from being deprived of his fundamental liberty for a longer period than necessary. It comes as no surprise that the prisoner in this case has been released earlier. (emphasis added)

We entirely agree with the foregoing statement of principle.

In our judgment, the magistrate who is called upon to exercise his/her power under s. 117 must act cautiously and with circumspection. He/she must not accept *ipse dixit* of the police officer requesting the remand. He/she must anxiously scrutinize the material that is produced and record his/her reasons for making the order. The necessity for reasons is obvious. For, the order for remand made by the magistrate is subject to revision by the High Court which is entitled to know why the order was made.

Looking at the grounds put forward in the present case, it would appear that the learned magistrate did not address her mind sufficiently to the facts presented. It does not appear that she has given any reasons whatsoever for granting the 13 days remand in the present case. That in itself is sufficient ground for the learned judicial commissioner's interference in the order of remand.

To sum up, we do not agree with the principle stated by the learned judicial commissioner on the application of s. 117. However, we do agree with the way she acted. On the facts, she was entirely justified in interfering with the learned magistrate's order of remand.

Delivered in Open Court at the conclusion of arguments on 6 September 2005.